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# John Kuhni Sons, Inc., a Utah Corporation, Petitioner, v. Utah Labor Commission Occupational Safety and Health Division, . Respondent.

Utah Court of Appeals

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## IN THE UTAH COURT OF APPEALS

JOHN KUHNI SONS, INC., a Utah Corporation,

*Petitioner*,

v.

UTAH LABOR COMMISSION, OCCUPATIONAL SAFETY AND HEALTH DIVISION,

*Respondent*.

**No. 20160953**

# BRIEF OF RESPONDENT UTAH LABOR COMMISSION, OCCUPATIONAL SAFETY AND HEALTH DIVISION

On petition for review from the Appeals Board of the Utah Labor Commission
No. 531093282


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## STATEMENT OF JURISDICTION

The Court has jurisdiction to review a decision of the Appeals Board of the Utah Labor Commission (Appeals Board). Utah Code §§ 34A-1-303, 63G-4-403, 78A-4-103.

## STATEMENT OF ISSUES PRESENTED FOR REVIEW

**Issue 1:** The Utah Occupational Safety and Health Act mandates that a Citation be sent via "certified mail" to an employer. UOSH used a commercial carrier service, Federal Express, a form of certified mail to deliver the citation. Did the Appeals Board err in holding that "certified mail" as used in the statute did not require the use of "Certified Mail" a trademarked term of the U.S. Postal Service?

Standard of Review: The Court reviews an agency's interpretation and application of the law for clear error. Utah Code § 63G-4-403(4)(d); *Murray v. Utah Labor Comm'n*, 2013 UT 38, ¶ 17, 308 P.3d 461.

Statement of Preservation: Kuhni preserved this issue in the proceedings below. R. 63-64, 94, 96, 143-47.

**Issue 2:** Due process requires that the form of Citation and Notification of Penalty used by the Utah Labor Commission, Occupational Safety and Health Division reasonably convey to employers their 30-day right to contest. The Citation and Notification of Penalty at issue here was a fifteen-page document, with language on the first page of the first paragraph directing the reader to a



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specific section of the document, on pages three and four, for information on how to file a Notice of Contest. Did the Appeals Board err in concluding that the Labor Commission's notice was clear and unambiguous?

Standard of Review: The Court reviews an agency's interpretation and application of the law for clear error. Utah Code § 63G-4-403(4)(d); *Murray*, 2013 UT 38, ¶ 17.

Statement of Preservation: Kuhni preserved this issue in the proceedings below. R. 63-67 94, 96-98, 143-49.

## DETERMINATIVE PROVISIONS

Utah Code § 34A-6-303(1):

> (a) If the division issues a citation under Subsection 34A-6-302(1), it shall within a reasonable time after inspection or investigation, notify the employer by certified mail of the assessment, if any, proposed to be assessed under Section 34A-6-307 and that the employer has 30 days to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment.
> (b) If, within 30 days from the receipt of the notice issued by the division, the employer fails to notify the Division of Adjudication that the employer intends to contest the citation, abatement, or proposed assessment, and no notice is filed by any employee or representative of employees under Subsection (3) within 30 days, the citation, abatement, and assessment, as proposed, is final and not subject to review by any court or agency.



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## STATEMENT OF THE CASE

This case is about an administrative citation issued by the Utah Labor Commission, Occupational Safety and Health Division (UOSH) against Kuhni for a workplace incident which resulted in the serious injury of an employee. R. 151. Kuhni did not contest the Citation and Notification of Penalty (Citation) within the 30 days of receipt, as required by Utah Code § 34A-6-303(1)(b). The Citation became a final administrative order, not reviewable by any Court or agency. The Labor Commission's Adjudication Division dismissed the Notice of Contest due to lack of jurisdiction, a decision that was upheld by the Appeals Board.

### *Statement of Facts*

On February 22, 2016, UOSH issued the Citation against Kuhni. R. 21-37. UOSH delivered the Citation to Kuhni via Federal Express, an overnight commercial delivery service, with return receipt requested. R. 21-22. The Citation was delivered on February 25, 2016 and signed for by "S. Ballow," presumably a Kuhni employee.[1] R. 21. On the first page of the Citation, the first paragraph states, in part: "You have the right to contest this Citation. *For more information, please refer to the 'Right to Contest' section of this Citation.*" R. 23 (emphasis added). The section entitled "Right to Contest" starts on page three of the Citation and states:

[1] At no point in this litigation has Kuhni presented facts or evidence that it did not receive the Citation on February 25, 2016. R. 63-67, 94-94, 143-49)



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**THE RIGHT TO CONTEST THIS CITATION**

In accordance with UCA §34A-6-303, you have the right to contest all or any part of this Citation by filing a written notice of contest with the Utah Labor Commission Adjudication Division (Adjudication Division) within 30 calendar days of receipt of this Citation as follows:

1. Mail notice of contest to the Adjudication Division, P.O. Box 146615, Salt Lake City, UT 84114-6615; or
2. Deliver notice of contest to Adjudication Division located in the Heber Wells Building, 160 East 300 South 3rd floor, Salt Lake City, Utah; or
3. Electronically submit notice of contest to the Adjudication Division via email at casefiling@utah.gov; or
4. Fax notice of contest to the Adjudication Division at (801) 530-6333. If a notice of contest is received, the Utah Labor Commission will then provide an adjudicative hearing. For further guidance, please telephone the Adjudication Division at (801) 530-6800. **Unless you inform the Adjudication Division in writing that you intend to contest the Citation(s) within 30 calendar days after receipt, the Citation(s) will become a final order of the Utah Labor Commission and may not be reviewed by any court or agency.**

R. 25-26 (emphasis in original).

Kuhni did not contest the Citation within 30 days of receipt of the Citation. Kuhni filed its Notice of Contest on June 6, 2016, some seventy days after the Citation became a final administrative order, not subject to review by any court or agency. UOSH promptly filed a Notice to Dismiss for lack of jurisdiction, which the Adjudication Division's Administrative Law Judge granted. Kuhni appealed to



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the Appeals Board, which upheld the decision of the Adjudication Division. Kuhni never presented evidence to either the Administrative Law Judge or the Appeals Board that it did not receive the Citation. There is also a lack of evidence from Kuhni that the alleged unclear and hidden nature of the contest language in the Citation caused Kuhni to file an untimely Notice of Contest.

## SUMMARY OF ARGUMENT

Kuhni's argument is predicated on two flawed premises. Kuhni first argues that UOSH did not follow the statutory requirements regarding service of the Citation because it was sent via commercial carrier service instead of Certified Mail The result of this alleged failure would be that Kuhni can contest well beyond the statutory time limit. This claim is unfounded, as UOSH complied with Utah Code § 34A-6-303(1) when sending the Citation to Kuhni. Kuhni received actual notice of the Citation, Kuhni chose, at its own peril, not to file a timely Notice of Contest. The term "Certified Mail" (with capitalization) is a trademarked term of the U.S. Postal Service, while "certified mail" has a broader, more general meeting. Section 34A-6-303(1) uses the term "certified mail" (without capitalization), opening the statute to some ambiguity.

In a related argument, Kuhni argues that the email correspondence from a UOSH Compliance Officer to Kuhni regarding the upcoming deadline to contest the Citation did not satisfy due process. This contention is a red herring. Kuhni has



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not denied that it received the Citation via Federal Express on February 25, 2016. The admission has made the e-mail issue irrelevant to the Court's present inquiry.

Second, Kuhni's assertion that the contest language is "buried" in the Citation and thus unreadable is irrelevant. Under Utah law, UOSH need not show that Kuhni read or comprehended the Citation. The very first paragraph of the Citation directs the reader to the heading that one should look to if one is interested in contesting a Citation. That heading is on page three of the citation, and states in clear, unambiguous language the process one must follow. Kuhni has not provided evidence that a representative of the company was confused by the language, nor was there evidence that Kuhni tried to contest the Citation but was unable to successfully do so due to any alleged ambiguity. Well-settled Utah case law establishes the fact that in the administrative setting, UOSH need not prove that Kuhni read or understood the contest language. If the Citation contained language indicating how to file a Notice of Contest and the 30-day limit to do so, and Kuhni received the Citation, then the due process requirements are met.

## ARGUMENT

### I. Kuhni failed to timely contest the Citation despite receiving actual notice.

Kuhni failed to timely contest the Citation despite receiving actual notice. Kuhni takes an unduly narrow reading of the term "certified mail," especially in the context of administrative proceedings. It is undisputed that Kuhni received the



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Citation on February 25, 2016, and did not file a Notice of Contest within the 30-day period following receipt. Under Section 303(1)(b), the Citation thus became a final order, not reviewable by any court or agency. This issue, of whether a commercial carrier delivery suffices for "certified mail" of an administrative citation is one of first impression for Utah appellate courts. Kuhni can provide no Utah case law that supports its argument. The non-binding, marginally persuasive case law cited by Kuhni can be further distinguished by the facts specific to this matter.

**a. The term "certified mail" does not require using the U.S. Post Office's "Certified Mail" system.**

Utah Code section 34A-6-303(1)(a) states that a Citation must be sent via "certified mail." UOSH sent Kuhni its Citation via Federal Express, return receipt requested. Kuhni argues this doesn't count as "certified mail" under section 303(1)(a) and he therefore never received proper service and his 30-day deadline to contest the Citation was never triggered. But, contrary to Kuhni's argument, the term "certified mail" as used in the statute is not limited to the "Certified Mail" service offered by the United States Post Office.

The Court's objective when interpreting a statute is to give effect to the legislature's intent. *LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135. To discern the intent of the legislature a court should look to the statute's plain



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language. *Id.* When statutory language is clear and unambiguous, courts will utilize a plain language standard of interpretation. *State v. Harker*, 2010 UT 56, ¶ 12, 240 P.3d 780. A statute is ambiguous if duplicative, yet plausible meanings are not eliminated from possibility. *Utah Pub. Employees Ass'n v. State*, 2006 UT 9, ¶ 60, 131 P.3d 208 (Parrish, J., concurring). When ambiguities are discovered, a court may look beyond the statute to legislative history and public policy to discern intent of a statute's wording. *Id.* at ¶ 59.

Acknowledging these rules, the plain language of section 34A-6-303(1)(a) invites multiple, reasonable interpretations. No one disputes that "Certified Mail" is a trademarked service of the United States Postal Service. The statutory term "certified mail," however, has a meaning beyond this trademarked service offered by the United States Postal Service. Black's Law Dictionary defines "certified mail" as "Mail for which the sender requests proof of delivery in the form of a receipt signed by the addressee." Black's Law Dictionary (10th ed. 2014). As a verb, Black's Law Dictionary defines "mail" as "To deliver (a letter, package, etc.) to a private courier service that undertakes delivery to a third person, often within a specified time." *Id.* Here the Citation contained proof of delivery in the form of a receipt signed by a representative of the addressee. R. 21. The proof of delivery shows that an employee of Kuhni, who was apparently designated by Kuhni to receive such deliveries, signed for the Citation on February 25, 2016 at 11:54 a.m.



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*Id.* Accordingly, the Citation was sent by "certified mail" for purposes of section 303(1).

Kuhni's reliance on the Delaware case *Leatherbury v. Greenspun* is misplaced. 939 A.2d 1284 (Del. 2007). In *Leatherbury*, a plaintiff initiated a state court action for medical malpractice. *Id.* at 1286-87. Under Delaware law, a party can toll the relevant statute of limitations for up to ninety days from the applicable limitations contained in the section by sending a "notice of intent to investigate" via "certified mail, return receipt requested" to the potential defendant. *Id.* Per the statute, the "notice of intent to investigate" was not filed with the court at the time of service; a copy, along with the Certified Mail receipt is attached to the complaint at the time of filing to prove the filing was timely. *Id.* The plaintiff's attorney sent the notice via Federal Express rather than Certified Mail, return receipt requested, through the U.S. Postal Service. The case was dismissed as being filed after the statute of limitations had run. *Id.* The Supreme Court of Delaware, in upholding the dismissal, held that the statute at issue imposed an affirmative duty on the party to act in a particular manner to toll the statute of limitations, specifically the use of Certified Mail, instead of a commercial courier service to send the notice. *Id.* at 1292.

Here, the case can be distinguished because *Leatherbury* dealt with a private right of action; a statute of limitations to initiate a tort suit. UOSH's administrative



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citation against Kuhni is part of UOSH's statutory charge, protecting Utahns from unsafe workplaces. The notice and service requirements are more stringent in private tort suits, like in *Leatherbury,* than in administrative actions, like a UOSH Citation. As discussed below, the United States Supreme Court and Federal OSHA Review Commission have held that when public rights are at stake, technical deficiencies are excusable. Further, the Utah Supreme Court has held that going beyond what the statute requires in the service of an administrative action does not make the service defective.

**b. Persuasive Federal OSHA decisions favors the Appeals Board.**

Persuasive federal OSHA decisions favor UOSH's interpretation. In *Brock v. Pierce County*, 476 U.S. 253 (1986), the Court held that a failure of an agency to observe a procedural requirement does not void subsequent agency action, especially when important public rights are at stake. *Id.* at 260. The Supreme Court's holding in *Brock* was subsequently applied in a federal OSHA case with similar facts to the matter before this Court. In *General Dynamics Corp., Electric Boat Division, Quonset Point Facility*, federal OSHA personally served the employer with the Citation instead of using certified mail, which the Occupational Safety and Health Act required.[2] 15 BNA OSHC 2122 (1993). The OSHA Review

[2] 29 U.S.C. § 659(a) states, in part: "If, after an inspection or investigation, the Secretary issues a citation under section 658(a) of this title, he shall, within a reasonable time after



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Commission held that the service of the Citation by means other than what the statute required was immaterial, provided the employer received notice. *Id.* at *4. Specifically, the OSHA Review Commission held that if an employer receives actual notice of the citation, the issue of whether service was technically perfect is not a defect negating service and proper notice to the party that an administrative action is pending. *Id.* at *4 (citing *Secretary of Labor v. P & Z Co. et al.*, 7 BNA OSHC 1589, 1591 (1979)).

Here, it is uncontroverted that Kuhni received the Citation. Kuhni's own action in attempting to file its Notice of Contest with the Labor Commission's Adjudication Division demonstrates this. Further, in the litigation before the Adjudication Division and the Appeals Board, no evidence was produced, not even an affidavit by a Kuhni representative, showing that Kuhni did not receive the Citation on February 25, 2016.

**c. Established Utah case law favors UOSH.**

Established Utah case law favors UOSH. In *State ex rel. Utah Air Quality Board v. Truman Mortensen Family Trust*, the Department of Air Quality (DAQ) attempted to issue a citation against a family trust. 2000 UT 67, ¶ 17, 8 P.3d 266. DAQ sent the original citation via certified mail, only to have it returned. After

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the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 666 of this title…"



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attempting multiple times to serve the family trust's representative via certified mail and personal service, the citation was finally accepted by the representative at a new address learned of by a DAQ employee. *Id.* ¶ 7. In holding that service was proper, the Utah Supreme Court noted that an agency should not be faulted for *exceeding* the legal requirements of the specific administrative service statute. *Id.* ¶ 17.

In support of that holding, the Supreme Court in *Mortensen* cited to its decision in *Anderson v. Public Service Commission of Utah*, 839 P.2d 822 (1992). In *Anderson*, the Supreme Court held that personal service was not required for administrative citations, and established a balancing test to determine whether the method of service used by an agency passes constitutional muster. *Id.* at 825-26 (citing *Tulsa Professional Collection Servs. Inc. v. Pope*, 485 U.S. 478, 484 (1988); *Carlson v. Bos*, 740 P.2d 1269, 1273-74 (Utah 1987)).[3] In administrative actions, the burden on a state agency to provide notice of an administrative proceeding, such as UOSH, is less onerous than in civil proceedings in a district court. *Anderson*, 839 P.2d at 825 (citing *Worrall v. Ogden City Fire Dep't*, 616 P.2d 598, 602 (Utah 1980) (Hall, J., dissenting)).

[3] The approach cited by the Utah Supreme Court in *Carlson* is also noteworthy. In *Carlson*, the court, in upholding the validity of Utah's nonresident service statute, held that state's interest in the subject matter of the proceeding is weighed against the parties' interest in receiving actual notice to determine what form of service would satisfy due process. 740 P.2d at 1273-74.



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Further, the Court in *Anderson* held that an agency has a significant interest in ensuring that a party does not take steps to evade notice. *Anderson*, 839 P.2d at 826. An employer fearing an adverse administrative outcome could simply refuse to claim mail, and thus avoid service. *Id.* This approach is evident in Utah Code section 34A-6-303(1)(b), which provides that a party must commence a Notice of Contest within 30 days "from the receipt of the notice issued by the division."

Here, if Kuhni's interpretation is upheld by this Court, then all an employer would have to do is to refuse to sign for a Certified Mail envelope from UOSH. Then, according to Kuhni's logic, an employer could never be cited, and their time to contest would never start. Such a result would be illogical. Also, such an approach goes against prior precedent in *Mortensen* and *Anderson*, in which the Utah Supreme Court did not punish an agency for going beyond statutory requirements to inform a party of an administrative action.

**d. The e-mail issue is irrelevant.**

Kuhni's argument about the allegedly confusing e-mail is irrelevant. In the original Motion to Dismiss filed by UOSH, Kuhni argued that in addition to the Federal Express package, a compliance officer with UOSH had sent e-mail correspondence to various officers and management-level employees of Kuhni reminding them of the deadline to file a Notice of Contest. R. 13-43. UOSH made the argument only as an alternative in case Kuhni responded that it had never



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received the Citation. However, from the response in opposition to the motion to dismiss and onward, Kuhni has never argued that it failed to receive the Citation by Federal Express on February 25, 2016. As such, the additional steps taken by UOSH to notify Kuhni, through e-mail correspondence with its officers and management-level employees, is an irrelevant issue. At best, it demonstrates that UOSH was going beyond the statute to notify Kuhni, much like the DAQ in *Mortensen*.

## II. The language in the Citation concerning the contest procedure is clear and unambiguous.

The language in the Citation concerning the contest procedure is clear and unambiguous. Under well settled Utah law, UOSH need not prove that Kuhni read and understood the Citation language. Even if that were the standard, Kuhni presented no evidence that its representatives found the contest language confusing and "buried" in the Citation document.

### a. Utah law is clear that UOSH need not prove Kuhni read and understood the contents of the Citation.

Utah law is clear that UOSH need not prove Kuhni read and understood the contents of the Citation. *See Mortensen*, 2000 UT 67, ¶ 17. In *Mortensen*, the DAQ issued an administrative citation against a family trust, who owned an apartment building in Salt Lake City. *Id.* ¶ 6. The administrative citation was five pages long, and included information on how the family trust could contest the citation and



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penalties. *Id.* ¶ 6. The contact person for the family trust filed a Notice of Contest with a Utah state agency other than DAQ, and because the DAQ citation was therefore not contested, it became final. *Id.* ¶ 8. After the administrative citation became final, DAQ filed an action in district court to seek enforcement of the citation. *Id.* ¶ 9. The district court granted summary judgment and the family trust appealed. *Id.* ¶ 13. On appeal, the family trust alleged that the notice issued by DAQ was unclear. *Id.* ¶ 15.

In upholding the district court's granting of summary judgment, the Supreme Court held that an administrative agency is not required to show that the recipient of a citation read the documents or have actual notice of its existence or contents. *Id.* ¶ 17 (citing *Anderson v. Public Service Commission of Utah*, 839 P.2d 822, 826 (Utah 1992)). If the party receives the administrative citation documents, an agency cannot be charged with inadequate notice if the recipient fails to read or fully understand its contents. *Mortensen*, 2000 UT 67, ¶ 17.

Here, Kuhni argues that the language of the Citation is unclear and confusing. In supporting its argument, Kuhni can cite to no relevant Utah case law, and ignores the *Mortensen* case, which is controlling on this issue. Kuhni provided no evidence to support its bare allegations. Even with evidence, however, the issues raised by Kuhni in the instant case and the family trust in *Mortensen* are identical and would have to be rejected.



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b. **The case law cited by Kuhni is unsupportive of its position.**

The case law cited by Kuhni doesn't support its position. Each case can be distinguished from the case at hand. Kuhni's reliance on *O'Connell v. Norwegian Caribbean Lines, Inc.*, 639 F. Supp. 846, 846 (N.D. Ill. 1986) is particularly problematic. In *O'Connell*, the notice language at issue was buried in the "passenger copy" of a cruise line ticket and hidden on a page with other, larger type. In contrast, the body of the UOSH Citation is composed of the same type size and font. R. 21-37. The contest language, contained on pages three and four of the Citation, is clear and conspicuous. R. 25-26. The first paragraph of text in the Citation includes a sentence directing the reader to the exact section heading where information on how to file a Notice of Contest is contained. R. 23. The language on pages three and four of the citation is also in conspicuous font, including the last section which is in bold, underline font warning the party of the potential consequences for failure to timely file a Notice of Contest. R. 26.

Kuhni's reliance on *Brody v. Village of Port Chester*, is equally unhelpful. 434 F.3d 121 (2nd Cir. 2005). If anything, the holding in *Brody* favors UOSH. In *Brody*, a landowner was challenging various aspects of New York's eminent domain law regarding condemnation of land by a village for public use. *Id.* at 127. The landowner challenged the content of the notice because it lacked any mention of the 30-day period in which an affected party could challenge the condemnation.



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*Id.* at 129-30. The Second Circuit Court of Appeals held that the notice violated the Due Process Clause of the U.S. Constitution because the village failed to give explicit notice of the 30-day time limit. *Id.* at 132.

Here, unlike in *Brody*, the notice given to Kuhni was explicit. The Citation issued by UOSH to Kuhni explicitly stated the 30-day period which Kuhni had to contest the citation. R. 25-26. The Citation states, in bold, underlined print:

> **Unless you inform the Adjudication Division in writing that you intend to contest the Citation(s) within 30 calendar days after receipt, the Citation(s) will become a final order of the Utah Labor Commission and may not be reviewed by any court or agency**.

R. 26 (emphasis in original).

Nothing could be clearer or more explicit than the language in the Citation issued by UOSH. Unlike the governmental body in *Brody*, UOSH states the 30-day contest period in the body of the Citation. The first page directs a reader where to look for the instructions on how to contest a citation. R. 23.

Kuhni also misapplies the holding in *In re Millspaugh*, 302 B.R. 90, 200, 2013 (Bankr. D. Idaho 2003).[4] The holding of *Millspaugh* once again favors UOSH. In *Millspaugh,* a creditor alleged it did not receive proper notice in a bankruptcy proceeding, when the notice was provided to the creditor by mailing it

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[4] While citing *Millspaugh*, the holding quoted by Kuhni is from *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.*), 293 B.R. 489, 497 (9th Cir. BAP 2003), which is cited by the court in *Millspaugh*.



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to them. *Millspaugh*, 302 B.R. at 93-94. The language in the notice was clear and unambiguous. *Id.* The bankruptcy court concluded that the notice provided the creditor was sufficient. *Id.*

Here, like in *Millspaugh*, the notice provided Kuhni was clear and unambiguous. Kuhni provided no evidence to either the Adjudication Division or the Appeals Board that a representative of the company was confused by the language. Further, even if its representative was confused, it is not the standard by which Utah law evaluates whether administrative notices satisfy due process requirements. *See Mortensen*, 200 UT 67, ¶ 17.

The final argument made by Kuhni regarding the clarity of the Citation's notice provisions is that a reasonable person "flipping through the notice" would not realize the importance of the contest provision. *See* Kuhni's Brief at 15. Utah law, as discussed above, does not require that UOSH show whether Kuhni "flipped through" or fully read the Citation and comprehended the language included therein. *See Mortensen*, 200 UT 67, ¶ 17.

For these reasons, the Citation language about the contest procedure was clear and unambiguous. Kuhni provided no evidence that it found the contest language "buried" or "confusing." Even if it did, to satisfy due process concerns with this administrative action, UOSH need not show that an employer read and comprehended the language in the Citation. Once the Citation was received by



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Kuhni, UOSH does not have to prove that Kuhni read the documents. Receipt satisfies the due process concerns of the U.S. Constitution and the Utah Constitution.

## CONCLUSION

For the foregoing reasons, the Appeal Board's decision should be affirmed.

Respectfully submitted,

/s/ David M. Wilkins
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## CERTIFICATE OF COMPLIANCE

1. This brief complies with the total type-volume limitations of Utah Rule of Appellate Procedure 24(f)(1) because:

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/s/ David M. Wilkins
David M. Wilkins



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## CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of May 2017, a true, correct and complete copy of the foregoing Brief of Respondent was filed with the court and served via United States mail or electronic mail as follows:

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